

FISHERIES LOAN FUND EXTENSION

APRIL 25, 1984.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. JONES of North Carolina, from the Committee on Merchant Marine and Fisheries, submitted the following

REPORT

[To accompany H.R. 5050]

[Including cost estimate of the Congressional Budget Office]

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (H.R. 5050) to extend until October 1, 1986, the authority and authorization of appropriations for certain programs under the Fish and Wildlife Act of 1956, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Page 2, strike out lines 3, 4, and 5 and insert the following:

(1) by amending subsection (a)—

(A) by amending the side heading to read as follows: "LOAN AUTHORITY.—", and

(B) by striking out "September 30, 1984" and inserting in lieu thereof "September 30, 1986";

Page 2, between lines 6 and 7 insert the following:

(A) by striking out "use and" in paragraph (1)(B),

(B) by adding at the end of paragraph (1) the following flush sentence:

No loan may be made under subparagraph (B) for any fishing vessel that has been reconstructed or reconditioned unless the reconstruction or reconditioning has been carried out within the United States.";

Page 2, line 7, strike out "(A)" and insert "(C)".

Page 2, line 8, strike out "subparagraph (A)" and insert "paragraph (2)(A)".

Page 2, line 11, strike out "(B)" and insert "(D)".

Page 2, line 12, strike out "subparagraph (C)" and insert "paragraph (2)(C)".

Amend the title so as to read:

To extend until October 1, 1986, the authority and authorization of appropriations for certain programs under the Fish and Wildlife Act of 1956, and for other purposes.

PURPOSE OF LEGISLATION

The principal purpose of the legislation is to extend for two years the authorizations under Sections 4 and 7 of the Fish and Wildlife Act of 1956. The legislation also amends the American Fisheries Promotion Act to continue, for two additional years, the utilization of the loan fund program conducted under Section 4 of the Fish and Wildlife Act of 1956 and capitalized through foreign fishing fees for the purposes set forth in the American Fisheries Promotion Act and to remove the "use" criteria applied to non-guaranteed vessel mortgages for the purpose of the loan fund program.

LEGISLATIVE BACKGROUND

H.R. 5050 was introduced on March 7, 1984 by Mr. Breaux and Mr. Forsythe. On March 20, 1984 a hearing was held on the bill by the Subcommittee on Fisheries and Wildlife Conservation and the Environment. Testimony was received from the National Marine Fisheries Service (NMFS), representing the Department of Commerce.

During the hearing, NMFS opposed the extension of authorizations for the Section 4 loan fund program. NMFS cited, as its chief rationale, the Administration's continued opposition to federal intervention in the credit market. In addition, NMFS indicated that the nation's economic recovery had reduced the need for this type of program. NMFS requested the Subcommittee to enact legislation proposed by the Administration to terminate the loan fund program and equally divide the unobligated balance of the fund on September 30, 1984, and all future foreign fishing fees, between the Department of Commerce and the department in which the United States Coast Guard is operating.

Representatives of the U.S. commercial fishing industry did not testify at the hearing, but submitted letters in support of the reauthorization of the loan fund program. In addition to disagreeing with the Administration's assertion that the economic recovery had lessened the need for the loan fund program, some segments of the industry were very critical of the Administration's implementation of the program, noting that extremely stringent application criteria had unnecessarily dampened the demand for the program. All segments of the industry strongly opposed the Administration's proposed legislation and urged the Subcommittee to maintain the integrity of the fund as a source of money for future fishery development needs.

No testimony or comments were received from the Administration or the private sector regarding the reauthorization of the Section 7 volunteer services program.

On March 22, 1984, the Subcommittee conducted a markup of the legislation and reported the bill by unanimous voice vote without amendment. On April 4, 1984, the Committee on Merchant Marine and Fisheries considered H.R. 5050 in open markup and reported the bill to the House by unanimous voice vote after agreeing to an amendment offered by Mr. Breaux.

THE AMENDMENTS

The amendment adopted by the Committee amends Section 221(b)(1)(B) of the American Fisheries Promotion Act (16 U.S.C. 7420 note) by deleting the so-called "use requirements" of Title XI of the Merchant Marine Act of 1936 (46 U.S.C. 1104 (d)(3)) from the criteria applied to non-Title XI mortgaged vessels seeking loan fund monies. The amendment maintains the existing requirement of that provision that such vessels be reconstructed or reconditioned in the United States, as well as the documentation and citizenship requirements that would apply if the vessel mortgage were guaranteed under the Title XI program.

A further amendment corrects the title of the bill.

BACKGROUND AND NEED FOR THE LEGISLATION

The Fisheries Loan Fund (the Fund) was originally established under Section 4 of the Fish and Wildlife Act of 1956 (16 U.S.C. 742c) for the purpose of providing low cost financing or refinancing for equipping, replacing, maintaining, repairing or operating commercial fishing vessels or gear. Due to an administrative moratorium, the Fund was inactive from 1972 through the passage of the American Fisheries Promotion Act (AFPA) in 1980. Pursuant to the AFPA, fees levied against foreign fishermen operating within the United States fishery conservation zone (FCZ) (now the U.S. exclusive economic zone (EEZ)), rather than taxpayer dollars, were designated as the sole source of monies in the Fund.

The AFPA also altered the purpose for which the Fund is to be used, stipulating that monies should be made available in the following priority: first, to avoid default on obligations related to the construction, reconstruction, reconditioning, or purchase of fishing vessels that are guaranteed by the U.S. under the Fishing Obligation Guarantee (FOG) Program; second, to avoid default on such obligations not guaranteed under the FOG program; and third, to cover vessel operating expenses in cases where a fishing owner or operator incurred a net operating loss.

Shortly after enactment of the AFPA, the Administration advised the Committee that the Fund could be considered an off-budget item. OMB Director Stockman, in a June 23, 1981 letter to the Committee, indicated that he had "no major objections to action by the Appropriations Committee to permit activation" of the loan fund program, provided that actual expenditures were adjusted to account for the loss incurred by the federal government through the provision of loans at interest rates below that which could be realized through the investment of such funds. The Committee was advised by the Department of Commerce that such an adjustment could be realized from 10 percent of the total generated by the fund.

Despite this initial Administration statement of support for the program, the Committee has been made all too aware of actions undertaken by the administering agency, the National Marine Fisheries Service (NMFS), that belie Mr. Stockman's record position to the Committee. For example, in each of the last two years, when the Committee has extended the authorization for the loan program for one additional year, the Administration has opposed the extensions. In addition, criteria set forth in regulations implementing the program have been far more stringent than those required by the authorizing legislation, which stipulates only that the loans be made "to owners and operators who . . . have substantial experience and proven ability . . . and only if (A) loans for the purpose (of preventing mortgage defaults) are not otherwise available at reasonable rates which permit continued operation, and (B) the loans are likely to result in the financial viability of the fishing operations of the owners or operators." The Committee notes that this statutory requirement should not result in situation whereby NMFS requires the potential applicant to prove that there are no other assets (including additional mortgages on personal residences) capable of generating the funds requested, or restricts the maximum amount of the loan to one year's debt service on the mortgaged vessel. Finally, the Committee nowhere finds authority for NMFS to decide, as a matter of policy, to exclude from the number of potential loan applicants, those owners or operators holding non-Title XI mortgages on a used fishing vessel.

With respect to the criticisms leveled by some members of the domestic fishing industry that the Administration's attitude toward this program, and the implementation of it, has been shortsighted, the situation with respect to Title XI guaranteed mortgages is most instructive. The Title XI FOG program provides a federal guarantee to lending institutions that provide a capitalization base for the domestic fishing industry. To date, 784 vessel owners have utilized this program to obtain \$231 million of capital. While the FOG program has been a major success for many years, several fisheries have, in recent years, become economically depressed. Many of those facing difficult times are traditional high value fisheries such as shrimp, crab and tuna. The reasons for the problems faced by these fisheries are numerous including: increased competition from cheaper, subsidized foreign imports; dramatic resource declines; the overall state of the U.S. domestic economy; and the over-valuation of the U.S. dollar abroad.

Consequently, the FOG program, which for most of its history has proven to be a money-maker for the federal government, has come under increasing stress as the default rate has increased by unprecedented proportions. While the program experienced only 3 defaults totalling \$978,000 from fiscal year 1976 through 1980, it has experienced 63 defaults totalling \$25,652,000 since the beginning of fiscal year 1981. When combined with the administrative expense for the program and advances made for the preservation and care of collateral, the program has gone from a surplus of almost \$10 million to a deficit of almost \$18.5 million. In response, new financings under the program have dropped from a high of 232 for \$82.3 million during fiscal year 1980 to 20 for just \$8.4 million during fiscal year 1983, bringing the infusion of new capital into

the industry to a virtual standstill. At the same time, the deficit in balance of trade with other nations on fish products increased to almost \$4.1 billion during 1983.

It was to avoid this situation that the current Fisheries Loan Fund Program was created in 1980. Indeed, during fiscal year 1981 and 1982, \$5,528,000 of the \$5.9 million that was existing in the Fund when the AFPA was enacted was loaned to 13 vessel owners to successfully avoid default on FOG loans. However, no additional appropriations were made during either fiscal year 1981 or 1982.

In FY 1983, Congress appropriated \$10 million to the loan fund program. Through what can be described as nothing more than a series of bureaucratic mistakes, however, only \$1.9 million of this amount was obligated. Consequently, the Appropriations Committee misinterpreted this low level of obligations as a signal that the demand for the program was not as great as previously anticipated and appropriated only \$3 million for FY 1984.

At the same time, of course, NMFS was forced, as a result of the high level of FOG defaults previously noted, to borrow \$18.4 million from the Treasury. This debt is costing NMFS and the FOG program approximately \$5,779 per day in interest. The Committee is incredulous that the Administration would allow this situation to occur when the loan fund program, paid for entirely by foreign fishing fees, is available. The Committee notes that since the enactment of the AFPA in 1980, 151 loans, totalling \$7.983 million, were closed pursuant to the revised loan fund program. Of these 151 loans, 144 for \$7.5 million covered potential FOG mortgage defaults and 7 for \$152,000 covered non-FOG mortgages. Of this amount, only 13 loans, valued at \$770,000 and covering approximately \$3.94 million in FOG mortgages, have gone into default. The other 131 loan fund recipients have been able to successfully avoid default, making payments on their loans and avoiding the default of \$35.7 million in FOG mortgages. None of the non-FOG mortgages have defaulted.

Section 7 of the Fish and Wildlife Act of 1956, as amended by the Fish and Wildlife Improvement Act of 1978, provides the Secretary of the Interior and the Secretary of Commerce with the authority to recruit, train, and accept the services of individuals without compensation, as volunteers for, or in aid of, programs conducted by either Secretary through the U.S. Fish and Wildlife Service (USFWS) or the National Oceanic and Atmospheric Administration (NOAA). Section 7 further authorizes the Secretaries to reimburse the various expenses of such volunteers such as transportation, uniforms, lodging and subsistence, incurred in the performance of their duties. Further, because volunteers are not classified as Federal employees, Section 7 provides for tort claims and workmen's compensation.

Section 7 of the Act authorized \$100,000 for USFWS and \$50,000 for NOAA for each of the Fiscal Years 1980, 1981, 1982, 1983, and 1984. To date, no funds have been appropriated under either authorization. Potential volunteer services at various USFWS and NOAA field stations include clerical work, construction and computer programming and field work such as habitat surveys and alteration, wildlife/fish census and stocking, and contaminant monitoring and cleanup. This program, if developed, will significantly

contribute to the cost-efficient operation of federal fish and wildlife programs and facilities and is in the full spirit of volunteerism.

SECTION-BY-SECTION ANALYSIS

There follows a section-by-section analysis of the bill accompanied, where appropriate, by discussion.

SECTION 1

Section 1 amends Section 4(c) of the Fish and Wildlife Act of 1956 by extending for two years (through September 30, 1986) the authority of the Secretary of Commerce to make available for loans those funds received by the Secretary for the purposes of the Fisheries Loan Fund.

This section of the bill also amends Section 7(c)(6) of the Fish and Wildlife Act of 1956 by extending for two years (through September 30, 1986) the authorization of \$100,000 for the Department of the Interior and \$50,000 for the Department of Commerce to cover the various expenses incurred through the implementation of the Volunteer Services Program.

SECTION 2

Section 2 amends the American Fisheries Promotion Act (AFPA) to maintain the stipulation that, through Fiscal Year 1986, loans made by the Secretary of Commerce under the Fisheries Loan Fund be for the sole purposes of assisting obligors to avoid defaults on obligations issued with respect to the construction, reconstruction, reconditioning or purchase of fishing vessels that are: first, guaranteed by the United States under Title XI of the 1936 Merchant Marine Act; or second, not so guaranteed, but the vessel concerned meets the reconstruction or recondition and documentation requirements, and the obligors meet the citizenship requirements, that would apply if the obligations were so guaranteed.

In this regard, it is important to note that the Committee has amended, in Section 2 of the bill, Section 221(b)(1)(B) of the AFPA to delete the stipulation that non-guaranteed vessels seeking loan fund monies meet the "use" requirements of Title XI. These requirements are set forth in Section 1104(d)(3) of Title 46 of the United States Code and prohibit guarantees for the purchase of used fishing vessels unless: (1) the vessel is reconstructed or reconditioned in the United States and will contribute to the development of the U.S. fishing industry; or (2) the vessel will be used in the harvesting of fish from an underutilized fishery. In lieu of these requirements, however, the amendment explicitly states that in making loan fund monies available to avoid defaults on mortgages for used fishing vessels, such vessels, if they have undergone reconstruction or reconditioning, must have undergone such reconstruction or reconditioning in the United States.

COST OF THE LEGISLATION

Pursuant to clause 7 of Rule XIII of the Rules of the House of Representatives, the Committee estimates that the cost of H.R. 5050 to the Federal government during Fiscal Years 1985 and 1986 will

be minimal due to the reimbursement requirements of loans made pursuant to this program.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of Rule XI of the Rules of the House of Representatives, the Committee estimates that the enactment of H.R. 5050 would have no significant inflationary impact on the prices and cost in the national economy.

COMPLIANCE WITH CLAUSE 2(1)(3) OF RULE XI

With respect to the requirements of clause 2(1)(3) of Rule XI of the Rules of the House of Representatives:

(A) A one-day hearing was held on the legislation on March 20, 1984, by the Subcommittee on Fisheries and Wildlife Conservation and the Environment.

(B) The requirements of Section 308(a) of the Congressional Budget Act of 1974 are not applicable to this legislation.

(C) The Committee on Government Operations has sent no report to the Committee on Merchant Marine and Fisheries pursuant to clause 2(b)(2) of Rule X.

(D) A letter was received from the Director of the Congressional Budget Office, pursuant to Section 403 of the Congressional Budget Act of 1974 in reference to H.R. 5050 and follows herewith:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., April 11, 1984.

HON. WALTER B. JONES,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Longworth House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for H.R. 5050, a bill to extend until October 1, 1986, the authority and authorization of appropriations for certain programs under the Fish and Wildlife Act of 1956.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

RUDOLPH G. PENNER,
Director.

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

1. Bill number: H.R. 5050.
2. Bill title: A bill to extend until October 1, 1986, the authority and authorization of appropriations for certain programs under the Fish and Wildlife Act of 1956.
3. Bill status: As ordered reported by the House Committee on Merchant Marine and Fisheries, April 4, 1984.
4. Bill purpose: H.R. 5050 would extend through fiscal year 1986 the authorization of appropriations for the Fisheries Loan Fund and certain volunteer service training programs. H.R. 5050 would

also change the eligibility criteria of non-Title XI vessels for loans from the Fisheries Loan Fund.

The Administration is not seeking reauthorization of the Fisheries Loan Fund in 1985, and would transfer the receipts from foreign fishing fees, which are currently deposited into the fund, to other activities. An estimated \$90 million will have accumulated in the fund by the end of 1984, and an estimated \$30 million will be collected from fees during 1985.

5. Estimated cost to the Federal Government:

[By fiscal years, in millions of dollars]

	1985	1986	1987	1988	1989
Estimated authorization level	3.3	3.5			
Estimated outlays	2.0	3.4	1.4		

In addition, because the bill would amend non-Title XI loan eligibility requirements, the number of vessels eligible for loan assistance from the Fisheries Loan Fund would increase. It is not clear at this time what effect, if any, this additional demand will have on the program, for which funding is subject to appropriation action.

The costs of this bill fall within budget functions 300 and 370.

Basis of estimate: For purposes of this estimate, it was assumed that the \$150,000 authorized for volunteer service training expenses would be appropriated prior to the beginning of each fiscal year. In the absence of specific funding levels for the Fisheries Loan Fund, the authorization level in each fiscal year was estimated to be CBO's baseline projections. Outlays reflect historical spending patterns.

6. Estimated cost to state and local Governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: On April 6, 1984, CBO prepared a cost estimate for S. 2463, as ordered reported by the Senate Committee on Commerce, Science and Transportation, March 27, 1984. S. 2463 extends the authorization of appropriations for the Fisheries Loan Program and the volunteer program through fiscal year 1985.

9. Estimate prepared by: Mary Maginniss (226-2860).

10. Estimate approved by: Robert A. Sunshine, for James L. Blum, Assistant Director for Budget Analysis.

DEPARTMENTAL REPORTS

There were no departmental reports received by the Committee on H.R. 5050.

CHANGES IN EXISTING LAW

In compliance with clause 3 or rule XIII of the Rules of the House of Representatives, as amended, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

§ 742c. Loans for financing or refinancing of cost of purchasing, constructing, equipping, maintaining, repairing, or operating commercial fishing vessels or gear

* * * * *

Fisheries loan fund; miscellaneous receipts payments into the Treasury

(c) There is created a fisheries loan fund, which shall be used by the Secretary as a revolving fund to make loans for financing and refinancing under this section. Any funds received by the Secretary on or before [September 30, 1984] *September 30, 1986*, in payment of principal or interest on any loans so made shall be deposited in the fund and be available for making additional loans under this section. Any funds received in the fisheries loan fund after [September 30, 1984] *September 30, 1986*, and any balance remaining therein at the close of [September 30, 1984] *September 30, 1986* (at which time the fund shall cease to exist), shall be covered into the Treasury as miscellaneous receipts. There is authorized to be appropriated to the fisheries loan fund the sum of \$20,000,000 to provide initial capital.

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§ 742f. Powers of Secretaries of Interior and Commerce—Policies, procedures, and recommendations

Volunteer services; incidental expenses; Federal employee status; authorization of appropriations

(c)(1) The Secretary of the Interior and the Secretary of Commerce may each recruit, train, and accept, without regard to the provisions of Title 5, the services of individuals without compensation as volunteers for, or in aid of programs conducted by either Secretary through the United States Fish and Wildlife Service or the National Oceanic and Atmospheric Administration.

* * * * *

(6) There are authorized to be appropriated to carry out this subsection \$100,000 for the Secretary of the Interior and \$50,000 for the Secretary of Commerce for each of the fiscal years 1980, 1981, [1982, 1983, and 1984] *1982, 1983, 1984, 1985, and 1986*.

16 U.S.C. 742c note

Loans Under Fish and Wildlife Act of 1956. Pub. L. 96-561, Title 11, § 221, Dec. 22, 1980, 94 Stat. 3294, provided that:

"(a) LOAN AUTHORITY [UNTIL OCTOBER 1, 1982].—During the period beginning on the date of the enactment of this title [Dec. 22, 1980] and ending at the close of [September 30, 1984] *September 30, 1986*, the Secretary of Commerce (hereinafter in this section referred to as the 'Secretary') may make loans from the fisheries loan fund established under subsection (c) of section 4 of the Fish and Wildlife Act of 1956 (16 U.S.C. 742c) [this section] only for the purposes set forth in subsections (b) and (c) of this section. Except

to the extent that they are inconsistent with, or contrary to, this section, the provisions of such section 4 shall apply with respect to loans made for such purposes.

“(b) **LOANS TO AVOID DEFAULT ON OBLIGATIONS COVERING FISHING VESSELS.**—(1) The Secretary may make loans for the purposes of assisting obligors to avoid default on obligations that are issued with respect to the construction, reconstruction, reconditioning or purchase of fishing vessels and that—

“(A) are guaranteed by the United States under title XI of the Merchant Marine Act, 1936 (46 U.S.C. 1271-1280, relating to Federal ship mortgage insurance) [section 1271 to 1280 of Title 46]; or

“(B) are not guaranteed under such title XI, but the fishing vessels concerned meet the [use and] documentation requirements, and the obligors meet the citizenship requirements, that would apply if the obligations were guaranteed under that title.

No loan may be made under subparagraph (B) for any fishing vessel that has been reconstructed or reconditioned unless the reconstruction or reconditioning has been carried out within the United States.

“(2)(A) Within the 30-day period beginning on the date of the enactment of this title [Dec. 22, 1980] in the case of fiscal year 1981, and before the beginning of [each of the fiscal years 1982, 1983, and 1984,] *each of fiscal years 1982, 1983, 1984, 1985, and 1986*, the Secretary shall estimate the number, and the aggregate amount, of loans described in paragraph (1)(A) for which application will likely be made during each of such fiscal years and shall reserve that amount in the fisheries loan fund for the purpose of making such loans during such year (or if such amount is larger than the fund balance, the Secretary shall reserve the whole fund for such purpose).

“(B) If any moneys are available in the fisheries loan fund for each such fiscal year after subparagraph (A) is complied with for that year, the Secretary shall use such moneys for the purpose of making loans described in paragraph (1)(B) during that year.

“(C) At an appropriate time during each of fiscal years [1981, 1982, 1983, and 1984,] *1981, 1982, 1983, 1984, 1985, and 1986*, the Secretary shall compare the actual loan experience during that year with the estimate made for that year under subparagraph (A) and if the Secretary determines, on the basis of such comparison, that the demand for loans described in paragraph (1)(A) will be less than estimated, the Secretary shall, for the fiscal year concerned, apply moneys reserved for such loans for the purpose of making loans described in paragraph (1)(B) and, to the extent not utilized for loans described in paragraph (1)(B), for the purpose of making loans under subsection (c).

“(3) The Secretary may make loans under this subsection only to owners or operators who, in the judgment of the Secretary, have substantial experience and proven ability in the management and financing of fishing operations, and only if (A) loans for the purpose described in paragraph (1) are not otherwise available at reasonable rates which permit continued operation, and (B) the loans are likely to result in the financial viability of the fishing oper-

ations of the owners or operators. Each such loan shall be subject to such terms and conditions as the Secretary deems necessary or appropriate to protect the interests of the United States and to carry out the purpose of this subsection. In establishing such terms and conditions, the Secretary shall take into account, among such other factors he deems pertinent, the extent to which the obligations concerned have been retired, and the overall financial condition of the obligors. The interest rate on loans made under the authority of this subsection shall not exceed that rate determined by the Secretary to be sufficient to cover the costs incurred in processing and servicing of such loans.

“(c) Loans to cover operating losses.—(1) If the Secretary determines that moneys will be available in such fisheries loan fund for **[any of fiscal years 1981, 1982, 1983, and 1984,]** *any of fiscal years 1981, 1982, 1983, 1984, 1985, and 1986*, after loans under subsection (b) are provided for that year, the Secretary may make loans for the purpose of assisting owners and operators of fishing vessels to cover vessel operating expenses in cases where an owner or operator incurs, or may incur, a net operating loss within such fiscal year.

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